

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
MONROE COUNTY, NEW YORK)	
)	File No. 0000834778
For a Public Safety License Pursuant to)	
Section 337 of the Communications Act of)	
1934, as amended)	

MEMORANDUM OPINION AND ORDER

Adopted: October 29, 2002

Released: October 30, 2002

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us an application¹ and waiver request² filed by Monroe County, New York (Monroe or County), for authority to operate a public safety radio system in a region that includes the City of Rochester. Monroe's proposed area of operation is approximately 663 square miles and includes a population of approximately 715,000.³ Monroe seeks a waiver, pursuant to Section 337 of the Communications Act of 1934, as amended (the Act),⁴ of Sections 22.503 and 22.531 of the Commission's Rules⁵ to use a currently unassigned frequency allotted for non-public safety use.⁶ For the reasons stated below, we grant Monroe's waiver request.

II. BACKGROUND

2. On April 3, 2002, Monroe filed an application and waiver request, pursuant to Section 337 of the Act,⁷ seeking authority to use frequency 931.3125 MHz for a public safety paging system serving police, fire, and other public safety agencies throughout the County.⁸ Monroe seeks a waiver of

¹ FCC File No. 0000834778, Monroe County, New York (Monroe or County) (filed April 3, 2002).

² See Request for Waiver of Monroe County, New York (filed April 3, 2002) (Request); Letter from Robert M. Gurss, Esq. to D'wana Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, FCC (filed August 20, 2002) (Monroe Letter).

³ Request at 1.

⁴ 47 U.S.C. § 337.

⁵ 47 C.F.R. §§ 22.503, 22.531.

⁶ Request at 1.

⁷ See 47 U.S.C. § 337; see also Balanced Budget Act of 1997, Pub.L.No. 105-33, 111 Stat. 252 (1997), § 3004 (Balanced Budget Act).

⁸ Request at 2.

Section 22.531 of the Commission's Rules,⁹ which allots the subject frequency for assignment to base transmitters that provide paging service under a geographic area authorization.

3. Monroe asserts that, because of a dramatic increase in the number of public safety pagers in use in the County, its current radio frequency assignment is inadequate to meet the County's immediate and future communications requirements.¹⁰ Monroe further submits that it needs the assignment of frequency 931.3125 MHz (or a similar frequency) to ensure the protection of the public safety.¹¹ Since 1974, Monroe has operated a UHF public safety paging system on frequency 453.400 MHz.¹² Initially there were 400 pagers,¹³ but now the system has more than 4,000 pagers.¹⁴ Users now include every fire department and Emergency Medical Service (EMS) agency within the County, most county police departments, several Federal agencies and a wide range of government officials from the County, the City of Rochester and other municipalities.¹⁵ In addition to supplementing its Computer Aided Dispatch (CAD) system,¹⁶ Monroe uses its paging system for special unit call-ups such as SWAT situations, family matters requiring intervention, arson cases, and hazardous material crises.¹⁷ The County's paging system also is used for high volume personnel alerts when a major emergency occurs.¹⁸ Monroe, thus, indicates that the paging system has become a critical element of the County's public safety communications and alerting network.¹⁹

4. The County notes that its current paging system – meeting a multitude of public safety communications needs as described above – is facing major problems due to increased co-channel interference and growing shortages of equipment.²⁰ In this connection, Monroe notes that the 450-470 MHz band (on which it operates its paging system) is a shared frequency band used primarily for voice communications.²¹ With the growth of the County's system to over 4,000 pagers and a major co-channel licensee, the State of New York, using the same frequency at nearby correctional facilities, interference has become a serious problem.²² Monroe further submits that in order for the State of New York to protect its operations from the County's system, the State of New York has found it necessary to operate at very high power levels which in turn further exacerbate the adverse impact on the County's operations.²³ Also confronting Monroe is the specter of an equipment availability problem for pagers

⁹ 47 C.F.R. § 22.531.

¹⁰ Request at 2.

¹¹ *Id.*

¹² This system operates with call signs WPIK755 and WPGQ974.

¹³ Request at 1.

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ In 1994, Monroe and the City of Rochester built a new "911" Emergency Communications Center and fully integrated automated paging into its CAD system. *Id.*

¹⁷ *Id.*

¹⁸ As examples of such emergencies, the County cites airport incidents and severe weather alerts. *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Under the County's current CAD system, voice communication often becomes unnecessary. *Id.*

²² *Id.* at 3.

²³ According to the County, most of its proposed area of operation is within the Canadian border and, as such, is already severely restricted in its spectrum availability. *Id.*

operating on its current frequency (453.400 MHz).²⁴ According to the County, Motorola announced that it will stop distributing paging-only devices in this frequency band.²⁵ The County suggests that the overall decline in the paging business has discouraged others from entering the business and, thus, paging equipment is only available in limited frequency bands and from very few vendors.²⁶ In this connection, the County states that it has not been able to find another manufacturer that has equipment that receives “data inverted” messaging format, which is the format of its current 450 MHz band system.²⁷ Furthermore, the difficulty in finding appropriate frequencies for the County’s operations is compounded by Monroe’s location above “Line A” in close proximity to the Canadian border.²⁸

5. Monroe’s waiver request was placed on public notice on June 4, 2002.²⁹ We received comments from the Office of the Fire Chief of the City of Rochester, the Fire and Emergency Medical Services Communications Board of Monroe County, the Emergency Medical Services Advisory Board of Monroe County, the Office of the Fire Bureau of Monroe County, the Fire Chief’s Association of Monroe County, the Law Enforcement Council of Monroe County, and the Public Safety Communications Office of Monroe County. All the commenters are public safety agencies in Monroe County and all support the waiver request. The commenters assert that the County’s public safety communications needs are not currently being met, and that permitting Monroe to use frequency 931.3125 MHz will alleviate the present interference problems³⁰ and shortages in paging equipment.³¹ They also submit that the spectrum has gone through two Commission auctions with no interest by commercial paging operators.³²

III. DISCUSSION

6. Monroe requests a waiver pursuant to Section 337 of the Act, which provides public safety entities with a statutory means of obtaining a waiver of the Commission’s Rules to permit them to use frequencies not allotted for public safety use.³³ Subsection (c)(1) of Section 337 provides as follows:

(c) LICENSING OF UNUSED FREQUENCIES FOR PUBLIC SAFETY SERVICES. --

(1) USE OF UNUSED CHANNELS FOR PUBLIC SAFETY SERVICES --

Upon application by an entity seeking to provide public safety services, the Commission shall waive any requirement of this Act or its regulations implementing this Act (other than its regulations regarding harmful interference) to the extent necessary to permit the use of unassigned frequencies for the provision of public safety services by such entity. An application shall be granted under this subsection if the Commission finds that --

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at Attachment B.

²⁸ *See* Monroe Letter at 2.

²⁹ Wireless Telecommunications Bureau Seeks Comment On Request For Waiver By Monroe County, New York, To Obtain A Public Safety Paging System Serving Police, Fire and Other County Public Safety Agencies, *Public Notice*, DA 02-1296 (WTB PSPWD rel. June 4, 2002).

³⁰ *See, e.g.,* Office of the Fire Bureau of Monroe County Comments, and Law Enforcement Council of Monroe County (Law Enforcement Council) Comments.

³¹ *See, e.g.,* Law Enforcement Council Comments.

³² *See, e.g.,* Fire and Emergency Medical Services Communications Board of Monroe County Comments, and Fire Chief’s Association of Monroe County (Fire Chief’s Association) Comments.

³³ *See* 47 U.S.C. § 337.

(A) no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use;

(B) the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations;

(C) the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made;

(D) the unassigned frequency was allocated for its present use not less than 2 years prior to the date on which the application is granted; and

(E) granting such application is consistent with the public interest.³⁴

7. When considering requests under Section 337, we first must make a determination that the applicant is an “entity seeking to provide public safety services.”³⁵ Section 337(f) defines the term “public safety services” as services –

(A) the sole or principal purpose of which is to protect the safety of life, health, or property;

(B) that are provided –

(i) by State or local government entities; or

(ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.³⁶

In its request, Monroe County observes that its geographical boundaries include the City of Rochester.³⁷ The County's system had grown from 400 pagers in 1974 to 1,000 pagers in 1994 when the County joined with the City of Rochester to build a new 911 Emergency Communications Center, and fully integrate automated paging into its CAD system.³⁸ Currently, Monroe County's system has more than 4,000 pagers and includes every fire department and EMS agency within the County, most police departments in the County (including the Monroe County Sheriff's Department and Rochester Police), several Federal agencies, and a wide range of government officials from the County, the City of Rochester and other municipalities.³⁹ As it notes, Monroe is a governmental entity requesting frequencies for official activities, the principal purpose of which is the protection of life, health, and property.⁴⁰ As such, we conclude that Monroe County meets the eligibility criteria established by Section 337(f)(1).

8. We next must determine if Monroe's proposal meets the statutory criteria for grant of a waiver under Section 337(c)(1) of the Act. Monroe contends that it meets the requirements of Section 337(c),⁴¹ and, in any event, a waiver is warranted pursuant to Section 1.925 of the Commission's Rules.⁴² Section 337(c) requires that a public safety applicant, such as Monroe, request specific unassigned

³⁴ 47 U.S.C. § 337(c)(1); *see also* Balanced Budget Act, § 3004.

³⁵ *Id.*

³⁶ 47 U.S.C. § 337(f).

³⁷ Request at 1.

³⁸ *Id.* at 2.

³⁹ *Id.*

⁴⁰ *Id.* at 6.

⁴¹ *Id.* at 7.

⁴² 47 C.F.R. § 1.925.

spectrum. Monroe requested frequency 931.3125 MHz to meet the mission-critical communications requirements of the County's public safety agencies.⁴³ A review of our licensing records indicates that this channel—currently designated for commercial paging service—is unassigned within 120 miles of Monroe County, and that no bids were placed for the channel in two recently completed auctions.

9. Subsection(c) of Section 337 of the Act further provides that grant of a waiver request under this statute is required only upon a finding that *all* five conditions are met regarding the spectrum specifically sought by an applicant.⁴⁴ As discussed in greater detail below, we find that all five criteria required by Section 337(c)(1) are met with respect to Monroe's waiver request for the unassigned frequency 931.3125 MHz. For these reasons, we grant Monroe's waiver request under Section 337(c) of the Act.

10. *Criterion One: No other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use.* The County submits that it has explored a number of options to address the operational challenges facing its current paging system.⁴⁵ First, Monroe examined whether other UHF or VHF public safety channels would provide fewer interference difficulties.⁴⁶ It submits that due to limited channel availability in the Canadian border area, in which the County is located, all of the allocated channels designated for public safety use are occupied by other users.⁴⁷ Monroe suggests that the only Public Safety Pool channels for which paging equipment is manufactured are in the VHF High Band and UHF Band.⁴⁸ Monroe submitted a letter from the APCO Local Frequency Advisor for Northern New York stating that an analysis of those paging bands reflects that no channels are available in the bands to satisfy the County's requested public safety use.⁴⁹ This analysis, which was based upon the APCO database used for all its frequency coordination recommendations,⁵⁰ indicated that all of the allocated channels would cause or receive harmful interference.⁵¹ The Frequency Advisor suggested and supported Monroe's effort to move its paging operations to the 900 MHz band.⁵² Monroe also submits that as paging equipment is not available for the 800 MHz Public Safety Pools, an analysis of spectrum availability in the 800 MHz band for the County's use serves no purpose.⁵³ We agree with Monroe that lack of equipment availability in a frequency band

⁴³ Request at 3-4.

⁴⁴ See 47 U.S.C. § 337(c)(1). See also South Bay Regional Public Communications Authority, *Memorandum Opinion and Order*, 13 FCC Rcd 23781, 23796 ¶ 33 (1998) (*South Bay*); Implementation of Sections 309(j) and 337 of the Communications Act of 1934, as Amended, WT Docket No. 99-87, *Report and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 22709, 22769 ¶ 132 (2000).

⁴⁵ Request at 3.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.* at 7. The "VHF High Band" is comprised of frequencies 150-174 MHz, and the "UHF Band" is comprised of frequencies 450-470 MHz.

⁴⁹ See *id.* at Attachment C, Letter from Gary E. Perkins, Northern New York Frequency Advisor, APCO International to Robert Gurss, Esq., Counsel for Monroe County, New York (dated Feb. 22, 2002). APCO Local Frequency Advisors are generally state or local government employees and Gary Perkins, the Local Advisor for Northern New York, is employed by Monroe County. *Id.* at 7 n.4.

⁵⁰ *Id.*

⁵¹ *Id.* at Attachment C.

⁵² Request at Attachment C.

⁵³ See County of Sacramento, California, *Order on Reconsideration*, 15 FCC Rcd 12600, 12605 ¶ 13 (WTB PSPWD 2000) (Sacramento).

makes its channels unavailable. Based on our analysis of the information Monroe has submitted,⁵⁴ we conclude that Monroe has shown that no other public safety spectrum is immediately available in the area to be covered by the County. In this connection, we note that the Commission has accepted similar evidence in other cases as sufficient evidence of the unavailability of other public safety spectrum.⁵⁵

11. *Criterion Two: The requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations.* Monroe provides a study map indicating that neither the requested channel nor the adjacent channels are assigned within 191.5 km (119 mi) of the County or, for that matter, anywhere within Western New York.⁵⁶ In this context, Monroe also notes that the Commission twice auctioned 931.3125 MHz in New York for commercial paging and did not receive any bids.⁵⁷ Relative to its location proximate to Canada, Monroe states that 931.3125 MHz is expressly authorized for paging use within the border region in which the County is located, and does not require further Canadian coordination.⁵⁸ Based on the record presented, we conclude that Monroe County has made a sufficient showing that the use of the subject frequency is technically feasible and would not interfere with existing licensees.

12. *Criterion Three: The use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made.* Monroe observes that the purpose of this criterion is to ensure that interoperability of public safety services is not impaired by assignment of an unassigned frequency to a public safety eligible.⁵⁹ As its paging system services every fire department, every EMS department and most police departments within Monroe, the County believes its new system would be a critical tool to enhance interoperability.⁶⁰ It believes that the added capabilities and reduced interference at 931.3125 MHz will enhance the County's paging system and its interoperable attributes.⁶¹ Those commenting are in agreement, stating that no other spectrum is suitable to operate a large countywide paging system.⁶² Section 337(c)(1)(C) requires that the spectrum sought is or will be used for other public safety operations

⁵⁴ Monroe states that it also evaluated commercial paging as an alternative to its current system, but determined that those commercial systems available in the County would not meet the critical communications requirements of Monroe's public safety agencies. Monroe states that it reached this conclusion because commercial pagers in Western New York are not delivered immediately as required by public safety needs, do not meet the necessary level of security, do not adequately provide "back-up" reliability, and tend to have coverage holes in rural and other remote areas. Request at 3-4. *See also* Sacramento, 15 FCC Rcd at 12605 ¶ 13.

⁵⁵ *See, e.g., South Bay*, 13 FCC Rcd at 23796 ¶ 34.

⁵⁶ Request at 8 citing 47 C.F.R. § 22.537(f), and Attachment D. Section 22.537(f) establishes the interfering contour for 931 MHz paging systems. The interfering contour is a circle centered on the coordinates of the transmitting antenna with a radius that varies depending on the antenna height above average terrain (HAAT) and the effective radiated power (ERP). Monroe's captioned application proposes transmitters operating at a maximum ERP of 1000 watts at six locations, with antennas at heights of between thirty-nine and seventy-two meters. Under Section 22.537(f) (Table E-2) the interfering radius for each of Monroe's proposed transmitters is 80.5 km (50 mi).

⁵⁷ *Id.* at 8. The frequency, 931.3125 MHz, was available for commercial paging applicants in the New York City Major Economic Area (which includes Monroe County) in Auction Nos. 26 and 40 (MEA002 CZMEA002AZ 931 New York City). *See* Auction of Licenses for the Lower and Upper Paging Bands Scheduled for June 26, 2001, *Public Notice*, 16 FCC Rcd 5913 (WTB/AIAD 2001).

⁵⁸ *See* Monroe Letter at 2 citing 47 C.F.R. § 22.531(e)(3).

⁵⁹ Request at 8.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*; *see, e.g., Fire Chief's Association Comments.*

in the geographic area.⁶³ Because Monroe needs the requested waiver to further interoperability, we find the proposed use of the requested frequency will be consistent with the Commission's public safety spectrum designation in the subject geographic area.⁶⁴ In this regard, we note that no one has sought to persuade us otherwise and we have reached this conclusion upon considering the proposed channel use as a whole.⁶⁵

13. *Criterion Four: The unassigned frequencies were allocated for their present use not less than two years prior to the date on which the application will be granted.* The subject frequency was allocated for paging services in 1982.⁶⁶ As the frequency 931.3125 MHz was allocated for its present use more than two years ago, Monroe has met this criterion.

14. *Criterion Five: Granting the application is consistent with the public interest.* In its waiver request, and through the comments received from numerous public safety agencies throughout the affected region, we find that Monroe has made a persuasive showing that grant of its waiver request is in the public interest. As described by Monroe, and supported by commenters, the County has outgrown its current system. Monroe has demonstrated that because of increased co-channel interference and growing shortages of equipment, it is in immediate need of a new public safety paging system and that allowing it to use frequency 931.3125 MHz would meet such need.⁶⁷ Granting Monroe's request will allow it to use otherwise vacant spectrum, alleviate serious spectrum congestion in Monroe County, and promote interoperability for fire, police and medical entities in the County.⁶⁸ As one commenter noted, "The County's current paging system is vital to municipal government operations, police and fire safety and is a valuable service that must be maintained, it is important that the County be granted this waiver to replace its existing system."⁶⁹ Therefore, we conclude that Monroe has made the requisite showing that granting its waiver request is in the public interest.

IV. CONCLUSION

15. We find that Monroe's Request for Waiver satisfies the criteria under Section 337(c) of the Act to obtain a grant of its application for 931.3125 MHz. We therefore grant Monroe's waiver request.⁷⁰

V. ORDERING CLAUSES

16. **IT IS ORDERED** that pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337(c), the Request for Waiver filed on April 3, 2002, by

⁶³ Cf. In re Application of Borough of Sayreville, New Jersey, *Order*, 14 FCC Rcd 19393, 19396 ¶ 8 (WTB 1999).

⁶⁴ See City of Pomona, California, *Order*, 15 FCC Rcd 15597, 15601 ¶ 10 (WTB 2000).

⁶⁵ See County of San Mateo, California, *Memorandum Opinion and Order*, 14 FCC Rcd 19002, 19008 ¶ 13 (WTB 1999).

⁶⁶ See Amendment of Parts 2, 22 and 90 of the Commission's Rules to Allocate Spectrum in the 928-941 MHz Band, *Second Report and Order*, 91 FCC 2d 1214 (1982).

⁶⁷ Request at 1-2.

⁶⁸ *Id.* at 9.

⁶⁹ Fire Chief's Association Comments.

⁷⁰ In view of the conclusion that a waiver for Monroe is warranted under Section 337(c) of the Act, we need not reach the question of whether Monroe's waiver request should be granted under Section 1.925(b)(3) of the Commission's Rules.

Monroe County to use frequency 931.3125 MHz for public safety services as requested in the captioned application **IS GRANTED**.⁷¹

17. **IT IS FURTHER ORDERED**, pursuant to Sections 4(i) and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337, that the Licensing and Technical Analysis Branch SHALL PROCESS File No. 0000834778 consistent with this Order and the Commission's Rules.

18. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

⁷¹ As noted, supra note 56, the captioned application requests authority to operate at six sites. Pursuant to 47 C.F.R. § 22.537(a) (2001), Monroe's stations will be protected from any co-channel proposed transmitter according to the following contour overlap criteria: The interfering contour of the proposed transmitter may not overlap Monroe's service contour, and the service contour of the proposed transmitter may not overlap Monroe's interfering contour. Service and interfering contours are as defined in 47 C.F.R. §§ 22.537(e),(f) (2001).